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INTERNATIONAL

BROADCASTING

ALBANIA

IRIS 2001-1:1/7 [AL] Public Broadcasting Charter Adopted

Kristina Dahl
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On the basis of the Public and Private Radio and Television Act of 30 September 1998, new rules on public service broadcasting entered into force in Albania on 6 July 2000. The rules are designed to regulate and establish the national Radio Televizioni Shqiptar (public service radio and television broadcasting company - RTSH) and ease the transition from state broadcasting to public service broadcasting. The broadcaster is a public body with its headquarters in Tirana. It is obliged under the new rules to serve the public by providing information, education and entertainment to all social groups, including national minorities. RTSH is composed of the administrative bodies of "Albanian Television", "Radio Tirana", several regional radio and television stations and the managing bodies of transmission stations. The new charter regulates the structure of the RTSH, matters of employment law for its employees, its responsibilities in terms of programming (production and transmission) and content, eg the duty to provide objective reporting and to respect human rights. It also contains provisions on technical matters and the funding of the RTSH.

Public Broadcasting Charter, 1 July 2000

AUSTRIA

IRIS 2001-1:1/8 [AT] Constitutional Court Revokes Radio Licences; Private Broadcasting Authority Grants Temporary Licences

Albrecht Haller
IFPI Austria

Having ruled on 29 June 2000 that Article 13 of a previous version of the Regionalradiogesetz (Regional Radio Act), which established the private broadcasting licensing authority (Privatrundfunkbehörde, previously known as the Regionalradio- und Kabelrundfunkbehörde), was unconstitutional (see IRIS 2000-8: 4), in its October session the Constitutional Court revoked the 23 disputed regional and local radio licences.

The legislature had taken precautionary measures several months previously and, by an amendment to the Regionalradiogesetz (see IRIS 2000-9: 6), had made it possible for existing licence-holders to apply to the Privatrundfunkbehörde for a temporary licence within ten days of their licences being revoked by the Verwaltungsgerichtshof (Administrative Court) or Verfassungsgerichtshof (Constitutional Court). They were also allowed to continue broadcasting until the end of the day on which the Privatrundfunkbehörde decided whether or not to grant them such a licence. As expected, all 23 licence-holders whose licences were revoked by the Constitutional Court took advantage of this measure. At a meeting on 19 December 2000, the Privatrundfunkbehörde granted temporary licences to the former licence-holders. These licences should expire within six months of issue.

Since the constitutionality of the Privatrundfunkbehörde is also questionable under current law (the Constitutional Court has already instigated new proceedings to examine the law), future licences will be granted not by the Privatrundfunkbehörde but by a new media authority ("Kommunikations-Kommission Austria", known as "KommAustria"), which has been in the pipeline for some time. The exact structure and form of this authority is still the subject of political debate, however.

Presseaussendung des Verfassungsgerichtshofes vom 24. November 2000

http://www.vfgh.gv.at/vfgh/presse/24112000.html

Press release of the Constitutional Court, 24 November 2000

Regierungsvorlage/Bundesgesetz, mit dem ein Bundesverfassungsgesetz über die

Einrichtung einer unabhängigen Regulierungsbehörde in den Bereichen audiovisuelle Medien und Telekommunikation erlassen wird, ein Bundesgesetz über die Einrichtung der "Kommunikations-Kommission Austria" ("KommAustria") erlassen wird sowie das Bundes-Verfassungsgesetz, das Kabel- und Satelliten-Rundfunkgesetz, das Rundfunkgesetz, das Fernsehsignalgesetz, das Telekommunikationsgesetz, das Zugangskontrollgesetz, das Kartellgesetz und das Signaturgesetz geändert werden, 400 der Beilagen zu den Stenographischen Protokollen des Nationalrates, XXI. Gesetzgebungsperiode

Government Bill/Federal Act to pass a Federal Constitutional Act on the establishment of an independent regulatory authority in the audiovisual media and telecommunications fields, to pass a Federal Act on "Kommunikations-Kommission Austria" ("KommAustria") and to amend the Federal Constitution, the Cable and Satellite Broadcasting Act, the Broadcasting Act, the Television Signals Act, the Telecommunications Act, the Access Control Act, the Cartels Act and the Electronic Signature Act, 400 supplements to the shorthand written protocols of the National Assembly, XXI legislative session

BELGIUM

IRIS 2001-1:1/10 [BE] Flemish Council for Disputes Admonishes VRT because of Discrimination against Catholic Faith

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The Vlaamse Geschillenraad voor radio en televisie (Flemish Council for Disputes in Radio and Television) for the second time held that the Flemish public broadcasting organisation (VRT) breached its obligation under the decreten betreffende de radio-omroep en de televisie (Flemish Broadcasting Act). This time, the Council found that a radio programme had ridiculed in a discriminatory way the essentials of Christian belief, namely the Resurrection and Ascension of Christ. The Council of Disputes recognised the existence of the freedom of expression for broadcasters to criticise and to impart ideas that can offend, shock or disturb a certain group in society. However, according to the Council of Disputes, certain limits should not be overstepped and the ridiculing of a certain belief should not have a discriminatory character. Without specifying precisely why the VRT-programme overstepped certain limits or why it was discriminatory, the Flemish Council for Disputes declared the complaint about the radio programme admissible and well-founded. The public broadcasting organisation VRT has been admonished by the Council. This is the second time that the ridiculing of Christian worship by VRT has led to a warning by the Council of Disputes (see IRIS 1999-1: 13).

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Flemish Council for Disputes in Radio and Television, Decision 006/2000, 4 October 2000, in the case of M. De Bruyn v. VRT

IRIS 2001-1:1/11 [BE] Flemish Parliament Opens the Door for Commercial Radio and Deregulates Regional Television

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On 14 November 2000, the Flemish Parliament agreed on some new provisions in the decreten betreffende de radio-omroep en de televisie (Flemish Broadcasting ActArt. 38sexies - 38terdecies). The new provisions create the possibility for private organisations to obtain a licence and to be allowed frequencies for the commercial broadcasting of radio programmes targeting (nearly) the entire Flemish Community. Until now, radio frequencies were only available for local and metropolitan private radio stations, while regional or national private radio was only allowed by means of cable distribution. All national and regional radio frequencies were exclusively at the disposal of the public broadcasting organisation VRT (see IRIS 2000-3: 6). The Flemish Ministry now has to work out the technical framework for the allocation of the frequencies that will be made available for commercial radio stations. It seems, however, that only one or two licences will be made available for commercial radio due to the lack of useable radio frequencies.

A decree of 1 December 2000 has modified some provisions on regional television in the Flemish Community. It emphasizes the mission on "regional information", abrogates the maximum of 300 hours of production time a year, while at the same time making more flexible the provisions on the maximum percentage of advertising time (Arts. 51, 52 § 4 and 82 § 7 of the Flemish Broadcasting Act). The Media Minister declared in Parliament that the new provisions should help regional television stations to improve their financial situation.

Decreet houdende wijzigingen van sommige bepalingen inzake de regionale omroepen in de decreten betreffende de radio-omroep en de televisie gecoördineerd op 25 januari 1995

http://www.vlaamsparlement.be

Flemish Parliament, 2000-2001, nr. 413 and Decree of 1 December 2000 modifying some provisions with regard to regional TV in the Broadcasting Act, Moniteur 20 December 2000

IRIS 2001-1:1/9 [BE] New Council for Guaranteeing the Protection of Minors Is Not in Breach with Article 10 ECHR

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By its Decree of 30 March 1999, the Flemish Parliament has decided to establish a new council to guarantee the protection of minors in application of Article 22 of the "Television without Frontiers" Directive. This new Council, the Vlaamse Kijk- en Luisterraad (Flemish Viewing and Listening Council for Radio and Television"the Council") will be composed of 2 judges and 7 experts inter alia in the field of child psychology and pedagogy. The Council will be empowered to take decisions on its own initiative or subsequent to a complaint. A conviction by the Council can lead to a warning and a request to stop the infringement or to an administrative fine of 5.000.000 FRF (approx. 125.000 Euro). Under certain conditions, the Council can also propose to the Flemish Government the suspension of the distribution of a program (see IRIS 1999-4: 8).

Shortly after the integration of these new articles into the decreten betreffende de radio-omroep en de televisie (Flemish Broadcasting Act, Art. 116 nonies decies), the Flemish commercial broadcasting organisation, VTM, applied to the Belgian Court of Arbitration and requested the annulment of these provisions. According to the VTM, the competences of the Council are to be considered as a discriminatory restriction on the freedom of expression as guaranteed by Article 10 of the European Convention of Human Rights (ECHR).

In its judgement of 29 November 2000, the Arbitration Court was of the opinion that the restrictions on the protection of minors as formulated in Article 78 § 1 of the Flemish Broadcasting Decree, together with the provisions on the Council, are in accordance with Article 10 ECHR. The Arbitration Court underlined that the aim of these provisions is the specific protection of minors against the harmful effects of a certain category of television programmes. The vulnerability of minors, as well as the composition of the new Council and the gradual nature of the sanctions that can be applied are sufficient guarantees that the new provisions do not infringe the freedom of expression in a discriminatory or disproportionate way. According to the Belgian Arbitration Court, the aim of the new provisions is to protect minors as a vulnerable group in society, which can be qualified as a legitimate and necessary aim in a democratic society.

Court d'Arbitrage n° 124/2000, 29 novembre 2000

http://www.arbitrage.be/public/f/2000/2000-124f.pdf

Court of Arbitration nr. 124/2000, 29 November 2000

SWITZERLAND

IRIS 2001-1:1/12 [CH] New Radio and Television Act under Discussion

Oliver Sidler
Medialex

Over 170 organisations of interested groups, parties and cantons have until the end of April 2001 to give their views on a draft of a new Radio- und Fernsehgesetz (Radio and Television Act - RTVG). The draft incorporates the principles of media policy set out in the discussion paper, which the Bundesrat (Swiss Federal Council) published in January 2000 (see IRIS 2000-2: 4).

By channelling responsibilities and available funds (licence fees), to the Schweizerische Radio- und Fernsehgesellschaft (Swiss Radio and Television CorporationSRG), it should be possible to provide a public service offering a common standard of programming to each language region, with comprehensive content, which can be received over a wide geographical area and which is capable of maintaining its position in Switzerland despite international competition. At the same time, opportunities for private broadcasters will be increased. First of all, market access will be opened up and broadcasting licences abolished. Furthermore, private broadcasters will no longer have to meet specific programming requirements and will have greater commercial opportunities, as the advertising regulations are extensively liberalised in line with European standards (eg commercial breaks, teleshopping). Since licences are to be abolished, broadcasters will no longer have to pay a special levy on their advertising income. Finally, broadcasters wishing to offer specialised services will be granted privileged access to broadcasting infrastructures.

In return for its preferential treatment in the distribution of licence fee revenue, the SRG will be subject to stricter advertising and sponsorship regulations than private broadcasters. The Act assigns responsibility for drawing up detailed regulations to the Bundesrat. The regulations are to be implemented by decree rather than by law because the separate regulatory frameworks for the private sector and the SRG each need to be adapted to current public service requirements and market conditions. The Bundesrat has already indicated how it intends to regulate the SRG's commercial activities in its decree. It will maintain restrictions on the amount of advertising on SRG channels, the current regulations on commercial breaks and the ban on radio advertising. In addition, all sponsorship and advertisements for medicine will be prohibited. Finally, teleshopping windows outside spot advertising will be banned on SRG channels. The more flexible nature of regulations made by decree means that the Bundesrat can adapt them to changing conditions as necessary while avoiding the time-consuming process of amending the law.

It is expected that, after the results of the consultation process have been analysed, the communication on the new RTVG will be submitted to the Federal Councils for discussion towards the end of 2001. The new Act could then enter into force no earlier than 2004.

CYPRUS

IRIS 2001-1:1/13 [CY] Harmonisation of the National Legislative Framework with the Television without Frontiers Directive

Andreas Christodoulou
Cyprus

During 2000, numerous efforts have been made in order to bring the legal order for the media of the Republic of Cyprus into line with European prerequisites.

As far as private broadcasting is concerned, Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities had already been transposed by Law 7(I) of 29 January 1998 \"consolidating and revising the Establishment, Installation and Operation of Radio and Television Stations\". Furthermore, Law 7(I) had adopted certain provisions of the Amending Directive 97/36/EC and had provided for the establishment of an independent Radio-television Authority responsible for the implementation of the legal framework concerning private broadcasters. The Cyprus Radio-television Authority was set up in May 1998. Finally, Law 7(I) contains anti-concentration measures and restrictions on cross-media ownership, regulates the equitable treatment of political parties and the operation of stations during state of emergency situations and provides for measures aimed at the protection of the national languages.

In addition, based on the above-mentioned Law, detailed Regulations were published in the Government Gazette on 28 January 2000. They set the legal framework for the procedures to be followed and the subject areas to be monitored by the Authority, such as journalistic ethics, advertising, teleshopping, the protection of minors and the protection of human rights. The Regulations contain, inter alia, a visual code for informing parents about the nature of the content of programmes and their suitability for being viewed by minors.

The remaining provisions of Directive 97/36/EC were included in Law 23(I) of 18 February 2000 amending the laws concerning radio and television stations.

The same procedure was followed for public service broadcasting. Law 8(I) of 29 January 1998 amending the Cyprus Broadcasting Corporation Law of 1959 (Capital 300) incorporated the provisions of Directive 89/552/EEC and certain provisions of Amending Directive 97/36/EC, while Law 24(I) of 18 February 2000 incorporated the remaining provisions of Directive 97/36/EC.

As regards the implementation of the provisions of the Directives, the Cyprus Radio-television Authority is preparing a report about the application of Articles 4 and 5 of the Directives concerning quotas achieved by the television stations vis-à-vis the proportion of European works

and independent productions contained in their programming respectively for the period 1999-2000.

The Authority is also finalising the list concerning events of major importance to society as envisaged by Article 3a of Directive 97/36/EC and in Article 9a of the European Convention on Transfrontier Television of the Council of Europe.

Law Consolidating and Revising the Laws Regulating the Establishment, Installation and Operation of Radio and Television Stations" as Amended up to August 2000 (Consolidated Version)

CZECH REPUBLIC

IRIS 2001-1:1/14 [CZ] New Public Broadcasting Laws on the Way

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At the beginning of the year, the Czech government approved a draft amendment to the Czech Television Act no.483/1991 as amended in 1995 and to the Czech Radio Act no.484/1991.

The purpose of the amendment is to revise the procedure for appointing the Director General of the public service broadcasters Ceská Televize (CT) and Cesk ´y rozhlas (CR). The appointment of a new CT Director General at the end of last year had led to mass strikes among the employees; the editorial offices and part of the production studio had also been occupied. Under the current law, the Director General is chosen by the Broadcasting Council under Article 9 (in connection with Article 5) of Act no.483/1991. The Council members, meanwhile, are proposed by the parties in government and voted in by Parliament.

In future, interested groups, churches, national minority associations and other non-governmental organisations will be able to help to choose Council members by proposing their own candidates for election.

In order to adopt the planned amendments as quickly as possible, the President of the Czech National Assembly (Parliament) declared a legislative state of emergency on 4 January. This means that Parliament can deal with the amending Act without delay. The Senate is expected to pass the Act before the end of January.

Zákon ze dne 2001, kterym se mení zákon c. 483/1991 Sb., o Ceské televizi, ve znení pozdejsích predpis u, zákon c. 484/1991 Sb., o Ceském rozhlasu, ve znení pozdejsích predpis u a zákon c. 468/1991 Sb., o provozování rozhlasového a televizního vysílání, ve znení pozdejsích predpisu

Act of 2001 amending Czech Television Act no.483/1991, Czech Radio Act no.484/1991 and Act no.468/1991 on radio and television broadcasting

GERMANY

IRIS 2001-1:1/15 [DE] Amendments to Inter-State Broadcasting Agreement Enter into Force

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The 5th Rundfunkänderungsstaatsvertrag (Agreement to the Amend the Agreement between Federal States on Broadcasting), agreed by the Minister-Presidents of the Länder and signed between 6 July and 7 August 2000, entered into force on 1 January this year.

The main subject of debate before the agreement was ratified by the various Land parliaments was a rise in public service broadcasting licence fees. The Landtag (Land parliament) of Saxony referred in the preamble to its Zustimmungsgesetz (Act of Consent) to the desire shared by many of the parliaments for closer involvement in deciding future amendments to Agreements between Federal States on Broadcasting, which regulate German media law. It also mentioned efforts to replace the current system with a new regulatory framework for the media in the medium term.

Changes are also made to the rules on short reporting, necessitated by the ruling of the Bundesverfassungsgericht (Federal Constitutional Court (see IRIS 1998-3: 7) and the new Article 52a of the Rundfunkstaatsvertrag (Agreement between Federal States on Broadcasting), which deals with the allocation of terrestrial digital broadcasting capacities.

In the Staatsvertrag über die Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD) (Agreement between the Federal States on the Union of German Public Service Broadcasters), the rules regarding the right of reply were revised. The purpose of this was to clarify to which broadcaster requests for the right of reply with regard to ARD programmes should be made.

The Rundfunkfinanzierungsstaatsvertrag (Agreement between Federal States on the Funding of Broadcasting) was revised in accordance with the plans adopted by the ARD to review the way in which funds are distributed between broadcasters.

Fünfter Rundfunkänderungsstaatsvertrag (unterzeichnet in der Zeit) vom 6. Juli bis 7. August 2000

http://www.artikel5.de/gesetze/rstv-5-e1.html

Fünfter Rundfunkänderungsstaatsvertrag (5th Agreement to the Amend the Agreement between Federal States on Broadcasting), signed between 6 July and 7 August 2000

IRIS 2001-1:1/16 [DE] Continuing Media Concentration a Sign of Convergence

Bernd Malzanini
KEK

In accordance with the Rundfunkstaatsvertrag (Agreement between Federal States on Broadcasting - RStV), the Kommission zur Ermittlung der Konzentration im Medienbereich (Commission on Concentration in the Media - KEK) must publish a report every three years on developments in concentration in private broadcasting. The report, under the title Fortschreitende Medienkonzentration im Zeichen der Konvergenz (Continuing media concentration, a sign of convergence), was published on 28 November 2000. The body responsible for controlling concentration in the broadcasting sector is meant to counter the dangers posed by the multimedia's power over public opinion, which have been emphasised by the Bundesverfassungsgericht (Federal Constitutional Court). The KEK report explains that this phenomenon is gaining new significance as the media world changes in the digital age. Technical progress may increase the amount of media content available, but it does not in itself lead to greater variety of programming. Rather, it appears at present that the highly concentrated structures of the traditional media are spreading to the new markets. The position of the leading television broadcasters is thus being strengthened even further. Using empirical data and numerous graphs, the report shows that the two large groups of German national television broadcasters, Kirch and RTL, continue to dominate. Foreign shareholdings have so far failed to produce greater competition and variety. International alliances between media companies mainly serve to maintain those companies' strong positions in their respective national markets. Domestic growth of large media corporations is the main root of their power over public opinion; it is not curbed by merger controls based purely on competition law. A comparative law study contained in the report shows that most western industrialised nations recognise the need for a specific broadcasting concentration authority. As well as competition law, all the legal systems examined in the report have special concentration laws designed to safeguard plurality of opinion and have established independent supervisory bodies for this purpose. Overall, apart from in Italy, the level of regulation in all these countries is higher than in Germany. The KEK stresses that the viewer ratings model set out in the Rundfunkstaatsvertrag has, in principle, been very effective. However, some provisions of the Agreement are in need of reform. They must be adapted to the changes resulting from the transition to digital television, with its specialised channels, programme bundles and Internet access. From a procedural point of view, if the KEK were granted independent powers of investigation, its work would be made both simpler and quicker. Over and above this, the KEK should be allowed to establish a mutual exchange of information with the Bundeskartellamt (Federal Monopolies Commission) and, in view of the increasing number of international alliances, with similar supranational regulatory authorities.

Medienkonzentrationsbericht der KEK

http://www.kek-online.de/kek/information/publikation/mk-bericht/index.html

KEK report on media concentration

UNITED KINGDOM

IRIS 2001-1:1/17 [GB] Government Announces Fundamental Reform to Broadcasting and Telecommunications Regulation

Tony Prosser
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The UK Government has issued a White Paper that proposes a complete overhaul of the regulatory institutions and much of the substantive law applying to communications, including broadcasting, telecommunications and the Internet. This is likely to result in new legislation to be introduced to Parliament in 2001 or 2002, after the next general election.

The centrepiece of the new proposals is the creation of a single regulatory commission for the communications and media industries. This will take the form of an Office of Communications (OFCOM) covering telecommunications, television and radio and will replace the current Office of Telecommunications, Independent Television Commission, Broadcasting Standards Commission, Radio Authority and Radiocommunications Agency. It will also take over some of the responsibilities of the Governors of the BBC, although they will remain in existence to implement the BBC's public service remit. OFCOM will be responsible both for economic and content regulation, and its objectives will include: protecting the interests of consumers by promoting open and competitive markets, maintaining high-quality content, a wide range of programming and plurality of public expression, and protecting citizens against offensive content and the invasion of privacy. It will also be responsible for spectrum management.

The Government envisages three tiers of regulation in future. A first tier would apply to all broadcasters and require minimum content standards, rules on advertising and on the impartiality of news. The second tier would comprise those public service obligations, which are quantifiable and measurable, such as quotas for independent and regional productions. These first two tiers will be enforced by OFCOM. The third tier, of qualitative public service obligations, will be largely left to selfregulation by broadcasters, or co-regulation involving both broadcaster and regulator. Thus the broadcasters will be required to produce detailed statements of programming policy and to report annually on how they have been delivered in practice. The White Paper also includes a strong defence of public service broadcasting, which it suggests will be even more important in the digital future. `Must carry' obligations will require the carriage of public service channels over cable and satellite, and OFCOM will be given powers to ensure that public service channels are given due prominence in electronic programme guides.

As regards the more substantive changes, the rules on concentration of ownership will be relaxed and further consultation will take place on the replacement of the current limit on ownership of interests that attract 15% or more of total TV audience share and on relaxing the current limits on cross-media ownership. Mergers will continue to be subject to examination by the competition authorities. The current disqualifications from ownership of licences, e.g., by religious

organisations, will be reviewed.

Secretary of State for Trade and Industry and Secretary of State for Culture, Media and Sport, `A New Future for Communications', December 2000

http://www.communicationswhitepaper.gov.uk/

IRIS 2001-1:1/18 [GB] Regulator Issues Direction to Private Television Company on "Due Impartiality"

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The Independent Television Commission (ITC), which regulates UK commercial broadcasting, has issued a direction to Scottish Television, a Channel 3 company, requiring it to ensure due impartiality in the run-up to a local Parliamentary election.

The company had broadcast throughout the UK, including Scotland, a programme entitled "Ask the Prime Minister" in which Tony Blair answered questions from a studio audience for one hour. This took place on 12 December. The election was due to take place on 21 December. Section 6 of the Broadcasting Act 1990 requires the Commission to do all it can to secure that every licensed service complies with the requirement to preserve due impartiality as regards matters of political or industrial controversy or relating to current public policy. The Commission considered that the appearance of the Prime Minister was "a high-profile network programme with party-political relevance". It thus issued a direction requiring that Scottish Television provide other major political parties in Scotland (including the Conservative, Liberal Democratic and Scottish Nationalist parties) an opportunity to comment on current political issues in a manner proportionate to the party-political dimension of the Prime Minister's opportunity. This must be broadcast in peak time on or before 20 December 2000. Failure to do so would amount to breach of the company's licence.

ITC Issues Direction to Scottish Television on Due Impartiality, ITC Press Release 83/00, 14 December 2000

http://www.itc.org.uk/

GREECE

IRIS 2001-1:1/19 [GR] New Legislation on the National Radio and Television Council and the Other Authorities in the Audiovisual Sector

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The Greek Parliament recently adopted new legislation (Act no. 2863/2000) concerning the Ethniko Symvoulio Radiotileorassis (National Radio and Television CouncilESR) and the other authorities in the audiovisual sector, i.e., the Minister for the Press and the Mass Media and the self-regulatory bodies set up by the Act. The Act reinforces the role of the ESR, which was established as an independent authority in 1989, and extends its powers to grant licences and impose penalties. The ESR is responsible for issuing, renewing and revoking licences in respect of private radio and television channels broadcasting without encryption and suppliers of encrypted radio and/or television services. It has general supervisory powers as regards programme quality and transparency in the audiovisual sector, and imposes penalties on broadcasters who infringe the legislation in force. Its decisions, as regards both granting licences and imposing penalties, are no longer subject to the supervision of their compliance with legislation exercised until now by the Minister for the Press and the Mass Media. The Minister retains his general responsibilities in proposing the necessary regulatory and legislative measures, monitoring developments in the audiovisual sector at Community and international level, etc.

The ESR now comprises seven members; its chairman and vice-chairman are appointed by the College of Presidents of the Greek Parliament on proposals from the President of the Parliament. The decision of the College requires a qualified majority of four-fifths. The term of office of members of the ESR is four years. The Act stipulates which functions are incompatible with membership of the ESR in order to ensure that it remains independent of radio and television companies and general political influence. Failure to meet the requirements of the new Act, and in particular as regards incompatibility, will be dealt with by a disciplinary board set up for the purpose.

The ESR is in four parts, reflecting its areas of responsibility - granting licences, ensuring respect for transparency, programme quality and ethics, and technical support and administrative services. The Act includes a series of provisions concerning the administrative and scientific staff recruited by the ESR, and provides that the ESR is to draw up its own internal regulations to determine the more detailed rules for its functioning.

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Act 2863/2000 on the National Radio and Television Council and other authorities in the

audiovisual sector, Official Journal 262 of 29 November 2000

IRIS 2001-1:1/20 [GR] Self-Regulation in the Media Sector

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The new legislation concerning the National Radio and Television Council (ESR) and the other authorities in the audiovisual sector (Act no. 2863/2000 - see IRIS 2001-1: 9) provides for self-regulation mechanisms by instituting self-regulatory bodies in respect of radio and television services. Under the new legislation, holders of authorisations (both private radio and television channels broadcasting without encryption and suppliers of encrypted radio and/or television services) must conclude multi-lateral contracts in which their parties define the rules and ethical principles governing the programmes broadcast. There must be at least two parties to the contract; other radio and television bodies may be invited to sign subsequently. Failure to conclude or sign a self-regulation contract would constitute a violation of the legislation in force and result in the ESR withdrawing or suspending the corresponding authorisation. The ethical rules provided for in the self-regulation contracts may under no circumstances be contrary to the legislation in force.

The task of ensuring compliance with the rules contained in the self-regulation contracts is entrusted to the Internal Ethical Committees designated by the contracting parties themselves. In the event of violation of the rules contained in the contracts, the Ethical Committees may impose moral penalties, e.g., the obligation to broadcast messages or special programmes, etc.. Failure to abide by the decisions of the Committee imposing such penalties would constitute a violation of the legislation in force, thereby incurring the penalties provided for by law, which are imposed by the ESR. The Internal Ethical Committees may also be entrusted with the power to investigate complaints and ensure exercise of the right of correction on the part of natural or legal persons whose honour or reputation has been damaged or whose strictly personal rights have been infringed.

The Act also provides that the radio and television bodies, the Union of Advertising Companies, the Association of Advertisers and any other representative body in the advertising sector may draw up an ethical code of practice concerning the content and the presentation of advertising messages broadcast by the electronic media. At the same time, the same organisations have set up a non-profit company for the purpose of ensuring that advertising messages broadcast by the electronic media respect both the legislation in force and the ethical code of practice referred to above. Producers of advertising messages and duly authorised radio and television bodies or suppliers of encrypted radio and television servicesor unions or associations of the same - may also be associate members of this non-commercial partnership. Representatives of written press companies may also be associate members if, according to the articles of association, the company's objects also include investigating advertising messages published in the written press. The non-commercial partnership is to provide its members with an opinion on whether an advertising message complies with the regulations in force before it is broadcast. In exceptional cases a message may be considered after it has already been broadcast once.

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Act 2863/2000 on the National Radio and Television Council (ESR) and the other authorities in the audiovisual sector, Official Journal 262 of 29 November 2000

MALTA

IRIS 2001-1:1/21 [MT] Broadcasting Act Amended

Klaus J. Schmitz
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In July 2000, Act No. XV amending the Broadcasting Act 1991 (as amended by Act XIV 1993), became effective. Key features of the law now include provisions allowing for wider media ownership, a definition of "teleshopping" as well as amendments to the "must carry obligation" imposed on cable TV operators. It also contains restrictions on the transfer of broadcasting licenses.

In its original version, the Broadcasting Act provided that a licensee could only obtain either a TV or a radio licence. In its 1993 amendment, the law widened this provision to allow for ownership of both a TV and a radio licence by the same licensee. In its latest version the Broadcasting Act now gives one person/company the option to own a third broadcasting service in form of a teleshopping station.

Teleshopping is now defined in the law. Prior to the 2000 amendment the law referred to teleshopping as a "form of advertisement", without providing a definition. The old law contained fairly stringent provisions as to the amount of time, which this "form of advertisement" could occupy per day. A legal notice is in preparation to give clarification to this issue. Although a final decision as to Malta's EU accession has yet to be made, the parliamentary discussion indicates that the current Government wants to bring the provisions of the legal notice into line with the EC "Television without Frontiers" Directive and the Council of Europe Convention on Transfrontier Television.

The new law also introduces changes to the "must carry obligations" on cable TV operators, which were already in existence under the old law. Initially introduced to remove the vast amount of aerials still to be seen in Malta, these provisions protected the cable operator from claims of breach of copyright when it re-transmitted broadcasts received terrestrially.

Finally, the amendments contain new restrictions on the transfer of broadcasting licenses. Previously the law had listed (1) assignment of a broadcasting licence and (2) the assignment of shares in a company holding a broadcasting licence, as acts constituting a transfer of a broadcasting licence and would therefore require the prior consent in writing of the Broadcasting Authority. It was held that transfer of the effective control of a company holding a broadcasting licence was implied in the law. Its inclusion in the list can therefore not be considered as being entirely new.

The new law adds the following acts to the existing list:

- the transfer of managerial control of a broadcasting station by a broadcasting licensee to another person,

- the transfer of beneficial ownership of a company holding a broadcasting licence and

- the merger of companies holding a broadcasting licence.

Broadcasting (Amendment) Act No. XV of 2000 amending the Broadcasting Act 1991, as amended by Act XIV 1993, (see Cap 350. of the Laws of Malta)

NETHERLANDS

IRIS 2001-1:1/22 [NL] RTL4 and RTL5 May Continue Broadcasting in the Netherlands for the Time Being

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The Chairman of the Administrative Division of the Council of State decided, in response to an appeal by the Holland Media Groep (Holland Media Group - HMG), that the programs of RTL and RTL5 are - for the time beingconsidered to come under the jurisdiction of Luxembourg and therefore may be transmitted in the Netherlands without a Dutch broadcasting licence.

HMG, a commercial broadcasting corporation that broadcasts television programs for RTL4 and RTL5, first lodged an appeal to the Administrative Division against a decree of the District Court of Amsterdam on 7 September 2000, (case 98/3461, Holland Media Groep v. Commissariaat voor de Media, see IRIS 2000-9: 11). The District Court of Amsterdam had to determine whether HMG falls under the jurisdiction of the Netherlands with the consequence that the provisions of the Dutch Mediawet (Media law) would apply and HMG would need a Dutch broadcasting licence to continue broadcasting. The Court did not accept the argument of HMG that it would fall under the jurisdiction of Luxembourg because HMG's headquarters are based in Luxembourg and, therefore, HMG would be entitled to broadcast also in the Netherlands on the basis of a Luxembourg broadcasting licence. Therefore, as a consequence of the decision of the District Court, the transmission of RTL4 and RTL5 is no longer permitted in the Netherlands without a standard Dutch broadcasting licence. As the Commissariaat voor de Media (Dutch Media Authority) stated clearly, the transmission by cable of programs by HMG will be no longer tolerated as of 1 December 2000.

HMG has appealed the decision of the District Court of Amsterdam to the Administrative Division of the Council of State. At the same time, the broadcasting corporation asked the Chairman of the Administrative Division of the Council of State for a provisional arrangement for the duration of the appeal.

The latter ruled that, for the time being, television programs of both RTL4 and RTL5 will be considered foreign so that broadcasting may continue on the basis of the Luxembourg broadcasting licence. This is to prevent a situation arising whereby, if the Dutch Media Authority eventually imposes sanctions on HMG for broadcasting without a licence, HMG would be forced to initiate separate proceedings against such sanctions. Furthermore, the Chairman ordered that the main question, of whether the programs of RTL4 and RTL5 fall under Dutch jurisdiction, should be decided not later than the beginning of March 2001.

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Administrative Law Division of the Council of State, judgement of 21 November 2000, case 200005000/02, Judgement of the Chairman of the Administrative Law Division of the Council of State on a request for a provisional arrangement during the appeal in the case Holland Media Group v. Dutch Media Authority

ROMANIA

IRIS 2001-1:1/23 [RO] New Measures for CNA

Mariana Stoican
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On 21 September, a new chairperson was appointed to the Consiliul National al Audiovizualului (National Audiovisual Council - CNA). At the beginning of the autumn, the CNA was mainly dealing with specific regulations and supervision of broadcasting time and programmes devoted by Romanian broadcasters to the election campaign. The basis for its work was the D.C.N.A nr. 240 privind conditiile de prezentare si duratele programelor destinate campaniei electorale pentru alegerea Camerei Deputatilor si a Senatului si pentru alegerea Presedintelui României (CNA Decision no.240 on conditions for the broadcast and length of programmes forming part of the Romanian Parliamentary, Senate and Presidential election campaigns) of 9 October 2000. During the run-up to the elections, 35 CNA inspectors monitored the programmes of 400 radio and television (terrestrial and cable) stations, reporting, condemning and even severely punishing any infringements they found. For example, it was announced at a CNA press conference on 7 November 2000 that, between 12 October and 7 November 2000 alone, numerous sanctions had been imposed on six television and four radio broadcasters for various offences committed during special election campaign programmes. CNA Decision no.260 of 20 November 2000 contained the harshest penalty ever imposed by the Romanian broadcasting control authority. It shortened the validity of the broadcasting licence held by C.M.C. International IMPEX SRL, the owner of private television station Tele 7 abc, by six months. The reason was the "uncivilised shouting match" broadcast on 9, 10 and 15 November 2000 during the Dan Diaconescu în direct ("Dan Diaconescu live") talkshow, which, under the terms of Article 13 of Decision no.240, was beyond the moderator's control.

SLOVENIA

IRIS 2001-1:1/24 [SI] Need for a New Media Law?

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The present Mass Media Law has been in the process of changing since 1996, that is since only two years after its adoption, because of its many deficiencies: the law is being circumvented, market players do not comply with those restrictions regulating media ownership shares, the law does not prevent the "selling" of broadcasting channels and it does not provide for the necessary sanctions for all sorts of legal offences.

In order to harmonise Slovenian with European legislation and to solve the existing legal problems, the Ministry of Culture has already prepared a new law. The draft contains 180 articles (plus, additionally, more than a hundred amendments) that should regulate print media, audio-visual media, and, partly, also the Internet.

Right up to the present, the draft version has undergone constant changes, inter alia because it did not comply with the binding principles regarding the proposals for the second parliamentary discussion that had been drawn up by the relevant parliamentary committee.

It might be stated that players throughout the entire sector concerned continue to criticize the current draft mainly for regulating some areas in disproportionate detail while addressing others by only very few provisions. In particular, the addressees of the regulation object to it for the following reasons: journalists fear that they will be faced with the erosion of some of the rights they enjoy under the current law (e.g., prior to the appointment or dismissal of the editor in chief the editorial board must be heard); the public Radio and Television (RTV) is viewed as opposed to the new law, especially as regards the articles concerning the transfer of establishment rights from Parliament to the Government, its advertising market share and its share of own production. Commercial broadcasters also criticise the law for continuing to discriminate in favour of the public RTV institution. Finally, the Broadcasting Council opposes the law because the law anticipates the establishment of a new regulatory body, namely the Broadcasting Agency, whose management will be appointed by the Government. The Council alleges that the relevant provision links the supervision of the broadcasting media operation to the executive branch of government and daily politics.

Predlog zakona o medijih, 04.07.2000, 2000EPA 811 - II druga obravnava

http://www.sigov.si/mk/slo/kdojekdo/mediji/zmedi2.doc

Draft Mass Media Law of 4 July 2000, 2000EPA 811 - II druga obravnava

IRIS 2001-1:1/25 [SI] POP TV/KANAL A Merger

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In October, the purchasing procedure for the entire package of Kanal A TV station shares was completed with the signature of the Closing Agreement. The Kanal A shares with a value of USD 12.5 million were bought by the company Super Plus Holding, which is owned by natural persons connected with the major commercial TV station in Slovenia, POP TV, and its majority shareholder, the company CME.

Kanal A used to be the first commercial TV station in Slovenia and was founded in 1990. From 1996 the company was operated by the company SBS, who had bought a right to convert debt to equity from Kanal A's creditor, Barings bank, and then last year actually exercised its right.

In 1995, a new commercial TV station, called "POP TV" with CME as the majority owner, was launched. It soon gained a majority share of viewers and a few years later a majority share of the TV advertising market in the country also. In addition to the state TV, POP TV has been the only TV station to produce the daily news.

Due to the specific nature of the small Slovenian market, the possibility of a merger or cooperation between two commercial TV stations existed for a period of time. The procedure itself took more than one year. The merger was a consequence of a wider agreement between SBS and CME. Because of the fact that the total market share of both TV stations represented more than one-half of the Slovenian TV advertising market share, a consultation procedure with the Urad RS za varstvo konkurence (Competition Protection Office) took place before the merger, in accordance with the Zakon o preprecevanju omejevanja konkurence (Prevention of Restriction of Competition Act).

On 28 August 2000, the Office decided that the merger did not violate the law and was in compliance with the competition rules. In its decision, the Office explained that despite the fact that the companies' combined market share will represent more than 40 % (which is the percentage that requires review by the Office) of the relevant TV advertising market, the merger of the two stations would not harm competition - mostly because of the strong position of the state TV station, which is supported by licence fees, state aid and advertising revenues.

The Svet za radiodifuzijo RS (Slovenian Broadcasting Council) also participated in the procedure. Its task is to control the activities of the electronic media according to the Zakon o javnih glasilih (Media Act). Considering the programming aspect, the Council was not against the merger because it estimated that the merger would not affect the plurality of the electronic media in the Republic of Slovenia.

Despite the merger, Kanal A and POP TV remain two separate channels with complimentary

programming schedules, while one team manages and operates both channels.

For the viewers the merger means above all a bigger choice of various sorts of programming in the same time slots. New formats will be introduced into the Kanal A schedule, some of which have never been broadcast by that station, such as news shows and more sport content.

Odlocba Urada RS za varstvo konkurence 3071-20/00-19, 28.08.2000

Decision by the Competition Protection Office No. 3071-20/00-19 of 28 August 2000

TURKEY

IRIS 2001-1:1/26 [TR] Broadcasting Ban because of Pokemon

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The Turkish Radio and Television Supervisory Authority (RTÜK) has issued private Turkish television station ATV with a one-day broadcasting ban because it broadcast Pokemon films.

The decision was taken on the grounds that the films contained violent scenes, which could be harmful to children. It followed an incident when a four-year old Turkish boy jumped from the seventh floor of a building and broke his leg. He later said that he had wanted to fly like a Pokemon.

The Turkish Ministry of Health had already announced before the ban was imposed that it considered the cartoons to be dangerous and warned that children might imitate the characters' actions.

COUNCIL OF EUROPE

IRIS 2001-1:1/1 Committee of Ministers: Recommendation on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector

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On 20 December 2000 the Committee of Ministers of the Council of Europe adopted a Recommendation on the independence and functions of regulatory authorities for the broadcasting sector (Rec (2000) 23) and authorised publication of the corresponding explanatory memorandum.

The Recommendation had been drawn up by the Steering Committee on Means of Mass Communication (CDMM) because the matter of the independence of regulatory authorities for the broadcasting sector as regards the political authorities and the responsibilities of these regulatory bodies was in question in many European countries. In producing expert reports on draft legislation in the broadcasting sector, the Council of Europe is often asked to explain the major principles, which should guide the functioning of regulatory authorities in this sector. It was therefore felt that a Recommendation on the independence of the functions of regulatory authorities for the broadcasting sector would be particularly useful, above all for some of the new Member States which lack experience and information on the subject.

Without going into the Recommendation in detail, a number of the basic principles it contains should nevertheless be noted.

Generally speaking, the document recommends that the governments of the Member States:

- establish, if they have not already done so, independent regulatory authorities for the broadcasting sector;

- include provisions in their legislation and measures in their policies entrusting regulatory authorities for the broadcasting sector with powers that enable them to fulfil their missions in an effective, independent and transparent manner.

Thus the rules governing regulatory authorities for the broadcasting sector should be defined so as to protect them against any interference, in particular by political forces or economic interests.

In order to reduce the risks of outside pressure, it is particularly necessary for the procedure for appointing the members of these organisations to be transparent.

Specific rules should also be defined as regards:

- incompatibility, in order to avoid that regulatory authorities are under the influence of political powers, or that the members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors;

- the power to dismiss members of regulatory authorities so as to avoid that dismissal be used as a means of political pressure;

- financing, to allow regulatory authorities to carry out their functions fully and independently, and to avoid that the public authorities use their financial decision-making power to interfere with the independence of regulatory authorities.

Apart from these basic points, the Recommendation also lays down a number of principles concerning the powers and areas of responsibility of the regulatory authorities, such as powers regarding regulation, granting licences, monitoring adherence to commitments and obligations on the part of broadcasters. The Recommendation also lists a number of principles concerning the responsibility of the regulatory authorities to the public.

In defining these standards, the Recommendation will constitute a benchmark for Member States as regards regulation of the broadcasting sector.

Recommendation Rec (2000) 23 of the Committee of Ministers to Member States on the independence and functions of regulatory authorities for the broadcasting sector (adopted by the Committee of Ministers on 20 December 2000 at the 735 meeting of the Ministers\' Deputies).

https://wcd.coe.int/ViewDoc.jsp?Ref=Rec%282000%2923&Language=lanEnglish&Ver=original&Site=CM&BackCo

EUROPEAN UNION

IRIS 2001-1:1/3 Council of the European Union: Agreement on Media Plus Programme (2001-2005)

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European Audiovisual Observatory

On 23 November 2000, the Council of the European Union (Cultural/Audiovisual Affairs) approved the Media Plus Programme. On the basis of the European Commission's proposal of 14 December 1999 for a training programme for professionals in the European audiovisual programme industry on the one hand, and for a programme to encourage the development, distribution and promotion of European audiovisual works on the other (see IRIS 2000-1: 6), the Council has now reached agreement on the financial aspects, in particular, of Media Plus. The whole programme will be allocated a budget of EUR 400 million, of which EUR 350 million is for the development, distribution and promotion section and EUR 50 million for the training section. It is envisaged that 57% will go to distribution, 20% to development and 8.5% to promotion. Around 5% will support pilot projects and 9% to horizontal measures (particularly Media Desks in the Member States).

While the training part of the programme must first be approved at its second reading by the European Parliament, the Council will be able to adopt the development section at one of its forthcoming sessions. Media Plus will replace the Media II Programme (IRIS 1995-2:12 and IRIS 1995-3:10), which expired at the end of 2000 and which had a total budget of EUR 310 million.

Press release no.13437/00, 2311th Council meeting (Cultural/Audiovisual Affairs), Brussels, 23 November 2000; IP/00/1355

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/13437.en0.html

IRIS 2001-1:1/4 European Commission: Spanish Football Broadcasting Rights

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After the Commission's intervention, in June the parties granted access to the relevant football rights to new cable and digital terrestrial television broadcasters in Spain. They also modified their agreements and formally guaranteed competitors that they were free to set the prices of the pay-per-view football matches. In November, Competition Commissioner Mario Monti ended the procedure against Telefónica and Sogecable.

Even if the threat of fines has been withdrawn, a number of remaining issues need careful consideration before concluding whether or not Audiovisual Sport complies with the Community's competition laws. The Commission intends to take a final decision in 2001.

\"Commission withdraws threat of fines against Telefonica and Sogecable, but pursues examination of their joint football rights\", document number IP/00/1352

http://europa.eu/rapid/pressReleasesAction.do?reference=IP/00/1352&format=HTML&aged=1&language=EN&gu

IRIS 2001-1:1/2 European Council: Proclamation of Charter of Fundamental Rights

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At the Nice Summit on 7, 8 and 9 December 2000, the European Council welcomed the joint proclamation by the Council, the European Parliament and the Commission, of the Charter of Fundamental Rights (see IRIS 2000-9: 4).

When commenting on the Nice Summit at the European Parliament on 12 December 2000, the President of the European Commission, Romano Prodi, pointed out that Parliament and the Commission have already made it clear that they intend to apply the Charter in full. This oral commitment, however, is not legally binding because no further steps have been taken in Nice to incorporate the Charter into the Treaties. Annex IV of the Treaty of Nice (provisional text to be approved by the Intergovernmental Conference on Institutional Reform) states that future initiatives should address the status of the Charter proclaimed in Nice in accordance with the conclusion of the European Council in Cologne. It is envisaged to include the incorporation of the Charter into the Treaties in the agenda of the Conference of Member States to be called in 2004.

Speech by Romano Prodi, President of the European Commission at the European Parliament on the European Council of Nice. European Parliament, Strasbourg, 12 December 2000

http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/00/499&format=HTML&aged=1&language=EN

Presidency Conclusions. Nice European Council Meeting 7, 8 and 9 December 2000

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/00400-r1.%20ann.en0.htm

IRIS 2001-1:1/6 European Film Forum: Cinema Directive Proposed

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On 14 November 2000, a proposal for a Cinema Directive was presented by the Federation of European Film Directors (FERA) at the European Union Cinema Day meeting, which took place that same day. This meeting was part of the 5 European Film Forum held from 9 to 14 November in Strasbourg (France).

The proposal aims at stimulating the circulation of European films by creating a European cinematographic space that shall enable the European cinema to fully benefit from the Single Market. The proposal notably introduces a definition of European cinematographic work and also deals with other issues such as the circulation of European works, support policies, legal deposit, the creation of a public register for films, the participation of TV broadcasters in the production and broadcasting of European works, and cinema education.

Commissioner Viviane Reding welcomed the FERA initiative and stated that the Commission intends to examine the proposal. She also announced that she will make a Communication to the Council and to the European Parliament concerning the cinema legal framework before the end of 2001, which will include many elements already present in the FERA proposal.

Proposition de Directive cinéma pour une harmonisation européenne de certains aspects de la réglementation relative au cinéma, Forum du cinéma européen de Strasbourg, 13-14 novembre 2000

Cinema Directive Proposal for an European harmonisation of certain regulatory aspects concerning the cinema, European Film Forum, 13-14 November 2000

IRIS 2001-1:1/5 European Parliament Endorses Proposal on Jurisdiction in e-Commerce Disputes

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On 21 September 2000 the European Parliament endorsed the proposals on jurisdiction in electronic commerce disputes.

This proposal for a council regulation (COM 1999/348, 99/0154) was presented by the Commission on 14 July 1999. It replaces and updates the 1968 Brussels Convention on jurisdiction, recognition and enforcement of judgements.

The Parliament acknowledges that consumers should have the right to sue in their local court but accepted that the particular nature of e-commerce also requires other forms of dispute resolution.

In an amendment suggested by the Parliament, the right of consumers to sue foreign suppliers of goods or providers of services in their jurisdiction is restricted to active Internet sites that actually target the consumer's country.

This amendment follows the approach intended to secure a balance needed between the interests of the different parties who might be involved in litigation.

Among other innovations in the original proposal are new rules of jurisdiction:

- The material scope of the provisions governing consumer contracts has been extended so as to offer consumers better protection, notably in the context of electronic commerce.

- The consumer can avail himself of the jurisdiction provided for by Article 16 where the contract is concluded with a person pursuing commercial or professional activities in the State of the consumer's domicile directing such activities towards that State, provided the contract in question falls within the scope of such activities.

The concept of activities pursued in or directed towards a Member State is designed to make clear that it applies to consumer contracts concluded via an interactive website accessible in the State of the consumer's domicile. The fact that a consumer simply had knowledge of a service or the possibility of buying goods via a passive website accessible in his country of domicile will not trigger the protective jurisdiction. The contract is thereby treated in the same way as a contract concluded by telephone, fax and the like, and activates the grounds of jurisdiction provided for by Article 16.

The condition in the old Article 13(3)b) that the consumer must have taken necessary steps for the conclusion of the contract in his home State is to be removed. This must also been seen in the context of contracts concluded via an interactive website. For such contracts the place where the consumer takes these steps may be difficult or impossible to determine, and they may be irrelevant to creating a link between the contract and the consumer's State. The philosophy of the new Article 15 is that the co-contractor creates the necessary link when directing his activities towards the consumer's State.

The new Article 15 offers more protection to consumers, as the weaker parties to a contract. It entitles the consumer to sue in the courts of his domicile. The wording of Article 15 has given rise to certain anxieties among sectors of the industry looking to develop electronic commerce. These concerns relate primarily to the fact that companies engaging in electronic commerce will have to contend with potential litigation in every Member State, or will have to specify that their products or services are not intended for consumers domiciled in certain Member States. One such concern relates to the perceived problems with the notion of "directing his activities" in Article 15, first paragraph, point (3), which is considered to be difficult to comprehend in the Internet world. This concept of using the words "directed at" is also found in US jurisprudence and is utilized by the World Intellectual Property Organization (WIPO).

Parliament has modified the Commission draft to allow freedom of contract to choose Alternative Dispute Resolution. Together with the existing consumer rights set out in EC legislation on unfair contract terms and some reliance on the "directed at"-concept, this should lessen these anxieties.

In the original proposal two amendments are made in Article 23 concerning the prorogation of jurisdiction. The first confirms that the jurisdiction conferred by a choiceof-forum clause is an exclusive jurisdiction (Case 23/78 Meeth v Glacetal [1978] ECR 2133), while enabling the parties to agree that this jurisdiction is not exclusive. This additional flexibility is warranted by the need to respect the autonomous will of the parties. The second takes account of the development of new communication techniques. The need for an agreement "in writing or evidenced in writing" should not invalidate a choice-offorum clause concluded in a form that is not written on paper but accessible on screen. The reference, of course, is mainly to clauses in contracts concluded by electronic means. This amendment is also directed to the objectives pursued by the Commission proposal for a Council Directive on certain legal aspects of electronic commerce in the internal market (OJ C 30, 5 February 1990, COM(1998) 586). Although the amendments suggested by the Parliament are not binding, the Commission has stated that some modifications will be made before presenting the final version for signature to the Council of Ministers.

Proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgements in Civil and commercial matters, COM(1998) 348 final of 14 July 1999

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51999PC0348:EN:HTML

FILM

SWITZERLAND

IRIS 2001-1:1/27 [CH] Publication of Federal Council's Communication on the Cinema Bill

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The Swiss Federal Council has published its communication to the Federal Parliament on the Culture and Cinematographic Production Bill. The bill is broadly based on the proposal drawn up by the committee of experts and is aimed at providing the Swiss cinematographic industry with modern incentives in keeping with current needs and realities. The main objectives of the bill are to encourage independent cinematographic production and to promote diversity among the films on offer in Switzerland. The effectiveness of the incentives for the cinema, whether selective or success-related, is to be assessed regularly. Financing for the production and exploitation of films is to be provided by means of a multi-annual expenditure ceiling, the amount of which is to be fixed by Parliament.

The bill drawn up by the committee of experts was reworked in order to take account of a number of objections, proposals and comments expressed during the consultation procedure (see IRIS 2000-6: 10). In particular, the Federal Council finally decided not to introduce an incentive tax aimed at promoting a varied selection of films on the Swiss market. This tax was roundly criticised by economic organisations and distributors in Switzerland, who felt it was interventionist. Article 21 of the bill thus provides that a tax intended to promote the diversity of films on offer may only be levied as a last resort if the mechanisms for self-regulation which the cinematographic sector in Switzerland has undertaken to set up do not make it possible to achieve the desired results in a specific geographical location. The amount of the tax would be between one and two Swiss francs per ticket, the reference figures being those recorded in a locality by the distribution and projection companies concerned; these would share equally in the income from the tax. Income from the tax would have to be reinvested in order to promote the distribution and showing of films not available on the market in question. The incentive tax is thus aimed at giving the greatest number of films of different types equal opportunities when they are shown in cinemas.

The present authorisation scheme for the distributors of films and cinema theatre operators is to be abandoned and replaced by a mere obligation to register. Despite the opinions expressed by a number of professional and political organisations in the course of the consultation procedure, the Federal Council decided not to maintain a system of authorisation for the large-scale multi-screen complexes as it proved difficult to define sufficiently reliable and objective cultural policy criteria for deciding whether or not to grant an authorisation to operate a complex of this kind.

Message du Conseil fédéral suisse concernant la loi fédérale sur la culture et la production cinématographique (loi sur le cinéma, LCin) du 18 septembre 2000

Message of 18 September 2000 from the Federal Council on the Federal law on culture and cinematographic production (Film Act - LCin/FiG)

FRANCE

IRIS 2001-1:1/28 [FR] Changes to Regulations on Media Chronology

Amélie Blocman
Légipresse

The purpose of media chronology is to establish a minimum period between showing a feature film in a cinema and using it in other ways, particularly in video form. Thus, in compliance with Article 1 of the Decree of 4 January 1983, no feature film shown in a cinema may be used in the form of supports intended for sale or rental for private use by the public, particularly in the form of video cassettes and video discs, within a period of one year from the issue of the authorisation of exploitation. It is accepted that this provision should apply to the DVDs currently available commercially. In practice, this period was nine months and could be reduced, following deliberations by a committee of professionals, according to the success or failure of the film in cinemas. Since 1 January, by virtue of a Decree of 24 November last year, holders of video rights may, with the agreement of the film's distributor, obtain a reduction of this period to six months from the Centre national de la cinématographie (CNC - National Cinematographic Centre).

Not only does the new Decree reduce the delay before producing a video or DVD version to six months, which brings France into line with the other countries of Europe; it also extends Article 1 of the Decree of 4 January 1983 by stating that "these provisions shall apply whatever language versions of the work are fixed on these supports". Specifically, this paragraph prohibits the sale of DVDs imported from the United States and Canada (zone 1), including those in their original language version without sub-titles. The regulations in force until now contained a legal loophole which allowed the import and sale in France of DVDs from zone 1 which had no sub-titles, sometimes even before the film had been shown in a cinema. The main purpose of the Decree is to protect the European cinema industry, but it will probably not prevent the on-line purchasing of zone 1 DVDs on foreign sites, or the downloading of films on the Internet.

Décret n° 2000-1137 du 24 novembre 2000 modifiant le décret n° 83-4 du 4 janvier 1983 portant application des dispositions de l'article 89 de la loi du 29 juillet 1982 sur la communication audiovisuelle, JO du 26 novembre 2000

Decree no. 2000-1137 of 24 November 2000 amending Decree no. 83-4 of 4 January 1983 on the application of the provisions of Article 89 of the Audiovisual Communications Act of 29 July 1982. Official Journal dated 26 November 2000

GEORGIA

IRIS 2001-1:1/35 [GE] Statute on State Support of National Film Enacted

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The Statute "On State Support of National Film" was signed into law by President Eduard Shevardnadze of the Republic of Georgia on 5 December 2000.

The Statute regulates governmental management in the sphere of film production, establishes the notion of "national film", as well as the procedure and financing of production, distribution and public exhibition of national films in Georgia. "National film" is defined as one authored and produced by nationals of Georgia and in the Georgian language (Art. 5).

The Statute establishes a government body responsible for the promotion of national film - The National Cinema Center at the Ministry of Culture of Georgia.

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http://www.medialaw.ru/exussrlaw/index.htm

The Statute "On State Support of National Film" was published in the official edition of the Georgian parliament on 18 December 2000

NEW MEDIA/TECHNOLOGIES

GERMANY

IRIS 2001-1:1/29 [DE] Federal Supreme Court Rules Internet Dissemination of Holocaust Denial Is Punishable

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The Bundesgerichtshof (Federal Supreme Court) has ruled that an Australian citizen can be punished for incitement of the people under the terms of Article 130.1 and 130.3 of the Strafgesetzbuch (Criminal CodeStGB).

The accused, a director of the "Adelaide Institute" in Australia, wrote, inter alia, articles in which he supported "revisionist" theories and which he posted on the Institute's home page on an Australian Internet server. In these articles, written under the pretext of scientific research, he denied that the murder of Jews under National Socialism ever took place, describing it as a fabrication by Jewish groups.

The Landgericht Mannheim (Mannheim District Court) had previously decided that the alleged offence was not punishable, since, although the people had indeed been incited, German criminal law did not apply to acts such as this.

After an appeal by the public prosecutor, the Federal Supreme Court ruled that German criminal law did apply, even though the accused had acted abroad, because the result of his act had affected Germany in the sense of Article 9 of the StGB. A foreigner who had published on a foreign Internet server opinions written by himself, which constituted the offence of inciting the people under Article 130.1 or 130.3 of the StGB (denial of the holocaust), was punishable if those opinions were accessible to Internet users in Germany.

This decision is of fundamental importance, since for the first time the Supreme Court has decided that a socalled abstract endangering offence, such as incitement of the people, whereby the offence does not depend on the actual consequence of the offence (such as a breach of the peace in this case) taking place, but merely being possible, can be punishable under Article 9 of the StGB.

It should be noted, however, that this ruling only applies to cases in which an author has published his own views on the Internet.

Urteil des Bundesgerichtshofes vom 12. Dezember 2000, Az.: 1 StR 184/00

Ruling of the Federal Supreme Court, 12 December 2000, case no. 1 StR 184/00

FRANCE

IRIS 2001-1:1/30 [FR] Applying Press Law to the Internet Raises New Doubts

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Current events connected with the posting of disputed messages on the Internet could well force Parliament to make a decision on whether the 1881 Act - and more specifically the three-month prescriptive period referred to in Article 65 of the Act - applies to the web.

The Court of Appeal in Paris set the ball rolling on 15 December 1999 by deciding that, on the Internet, the offence of defamation was continuous and that the prescriptive period referred to in Article 65 was never intended to apply to the web. On the other hand, the same court decided on 23 June 2000 that the threemonth prescriptive period for defamation began not on the day on which the offence was noted but the day on which it was first made public. This meant that the present case was out of time, since it was established that the information in question had been posted on the Internet on 22 September 1997 and that the first stage in proceedings, i.e., the making of a complaint of defamation by a private party, did not occur until 12 January 1999.

The latest decision on the matter was delivered by the Press Chamber of the Regional Court of Paris on 6 December 2000. This takes up the solution adopted by the court of appeal in the Costes case of 15 December 1999. A statement clarifying the principles involved is therefore awaited more than ever from the Court of Cassation.

In this case, the judges decided, concerning the accusation posted on an Internet site claiming that a political leader was in favour of an armed solution to an internal debate in his party, that publication (which did not in substance constitute defamation) was uninterrupted and that the offence therefore became a continuous infringement.

In justifying their position, the judges felt that the specific technical characteristics of the mode of communication via the Internet network changed the act of publication into an action over a period of time which then resulted from the repeated desire of the issuer of the message to post it on a site, to keep it there, to alter it and to withdraw it when he saw fit. The judges considered that making a message already published on another support available to the public offered immediate, constant accessibility to documents which would have gradually faded into oblivion but which technical progress kept alive in the memory. The Press Chamber felt that the offence was permanent since the damage it caused was permanent. The prosecuting authorities have appealed against the judgment.

TGI Paris, chambre de la presse, 6 décembre 2000, c. Lang c/ Th. Meyssan et autres

Regional Court of Paris, Press Chamber, 6 December 2000; case of Lang v. Th. Meyssan et al.

ITALY

IRIS 2001-1:1/31 [IT] Implementation of the Conditional Access Directive

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On 15 December 2000, the Conditional Access Decree (Attuazione della direttiva 98/84/CE sulla tutela dei servizi ad accesso condizionato e dei servizi di accesso condizionato, Decreto legislativo of 15 November 2000) was published in the Italian Official Journal and entered into force. In this way Italy has transposed Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access.

Article 1 contains definitions of: services based on conditional access (television or radio broadcasting services or Information Society services provided for remuneration and on the basis of conditional access); services consisting of conditional access (provision of conditional access to services based on conditional access considered as a service in its own right) and conditional access devices (equipment or software designed or adapted to give access to a protected service in an intelligible form), the aim of the decree being to prohibit infringing activities (Article 2). The latter are defined as the manufacture, import, distribution, sale, rental or possession for commercial purposes of illicit devices; the installation, maintenance or replacement for commercial purposes of an illicit device; the use of commercial communications to promote illicit devices (Article 4).

Pursuant to the 98/84/EC Directive, no restriction is laid down as regards the provision of protected services, which originate in another Member State or the free movement of conditional access devices. But specific reference is made to Article 2, paragraph 2, of Law no. 78/99 (see IRIS 1999-4: 8) which renders the use of a common TV-decoder for the transmission of conditional access digital programmes compulsory from 1 July 2000 (Article 3). The standards of the decoders were determined by the Autorità per le garanzie nelle comunicazioni (the Italian Communications Authority) by a regulation of 7 April 2000, no. 216/CONS/00 (see IRIS 2000-6: 9).

Articles 5 and 6 entrust the Ministero delle Comunicazioni (Communications Ministry) with monitoring and sanctioning powers; administrative pecuniary fines range up to 100.000 EUR.

Conditional Access Decree of 15 November 2000, no. 67, no. 373, Official Journal 2000, 292

UNITED STATES OF AMERICA

IRIS 2001-1:1/32 [US] Copyright Office Ruling Requires Royalties for On Line Simulcasting

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On 11 December 2000, the U.S. Copyright Office published a ruling that requires broadcast radio stations which simultaneously make music available on the Internet to pay royalties for their webcasts.

Under the Digital Copyright Millennium Act, royalties must be paid for music broadcast over the Internet. Traditional broadcasters, many of whom simultaneously broadcast their programming over the Internet, claimed their webcasts were "nonsubscription broadcast transmissions," and thereby exempt from the royalty requirement. Because the broadcasters paid a royalty for their broadcast transmission, they argued, they could not be compelled to remit a second royalty for the same material transmitted over the Internet.

Internet-only radio stations and the recording industry challenged this view. The Internet-only radio stations suggested that traditional broadcasters should not be absolved from remitting royalties for Internet-broadcast material, as it would constitute differential treatment between broadcasters and non-broadcasters. The recording industry claimed that royalties for Internet webcasts by broadcasters were required by the Act and necessary to compensate its members for the public performance of their work.

The Copyright Office ruled against the broadcast industry, finding that neither the Act nor other legislation exempted it from remitting royalties for Internet-broadcasts. In doing so, the Copyright Office rejected the broadcasters' claim that its Internet-broadcasts were exempt from royalties as nonsubscription broadcast transmissions. The Copyright Office concluded that an exemption could only be found if the broadcaster was acting within the terms of its FCC license. Since the webcasts are not covered within FCC broadcast licenses, an exemption to the royalty requirement could not be found. As a result of the Copyright Office's ruling, broadcast radio stations simultaneously making music available on-line will be required to remit royalties for their webcasts.

65 Fed. Reg. 77292 (11 December 2000)

RELATED FIELDS OF LAW

ICELAND

IRIS 2001-1:1/33 [IS] New Data Protection Act

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Due to its obligation under the Agreement on the European Economic Area (EEA) to implement Directive 95/46/EC, a new Data Protection Act has been adopted in Iceland. The new Act no. 77/2000 comes into effect on 1 January 2001. When preparing the Act, the Ministry of Justice sought inspiration from Norway as to how the Directive had been implemented there. Norway is in the same position as Iceland regarding relations with the European Union and obligations to implement directives that fall under the scope of the EEA agreement. Furthermore, the existing legislation on Data Protection dating from 1989 was largely based on the Norwegian model.

Under the new Act an independent Data Protection Authority (Persónuvernd) will be established. This will replace the existing Commission that was located in the Ministry of Justice, but still enjoyed some independence under the law. Five persons will sit on the governing board of the new institution. They will all be appointed by the Minister of Justice for a term of 4 years. One board member will be nominated by the Supreme Court, and one by the Association of Data Technicians. The remaining three will be appointed without nomination. The Director of the Data Protection Authority will be appointed for 5 years by the Minister following a proposal from the board.

The question of how to implement Article 9 of the Directive (Processing of personal data and freedom of expression) gave rise to some controversy during Parliament´s debate on the draft version of the law. It was decided that when personal data are processed solely for journalistic purposes or the purpose of artistic or literary expression only the following provisions of the law are applicable: The provisions concerning electronic or video-surveillance, on the fairness and lawfulness of data, on data accuracy, on data security and on direct marketing.

Data Protection Act no. 77/2000

NETHERLANDS

IRIS 2001-1:1/34 [NL] Non-discriminatory Cable Access - MCM v. CasTel et al.

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A number of decisions on access for broadcasters to cable infrastructures have been taken recently in the Netherlands. The Onafhankelijke Post en Telecommunicatie Autoriteit (Independent Post and Telecommunications Authority - OPTA) has repeatedly decided that cable network operators should not be allowed simply to refuse cable access for certain channels.

The case between broadcaster MCM and regional cable network operator CasTel concerned the latter's transmission and fees policies. MCM asked CasTel to carry its Muzzik channel. At the same time, MCM demanded that, if CasTel agreed to this request, it should pay a corresponding fee which, according to MCM, would cover, inter alia, the costs incurred for programme rights, collecting society fees, etc. CasTel refused to pay such a fee and to transmit Muzzik under these conditions. CasTel argued that MCM had no legal entitlement to payments of any sort. As a matter of principle, CasTel did not pay any kind of fee, compensation or other payment to broadcasting companies. On the contrary, as a rule the network operator was entitled to demand reimbursement of the cost of carrying the channel. MCM said that CasTel's transmission and fees policy lacked transparency and was discriminatory, particularly since CasTel made certain payments to other programme providers (Eurosport and the Discovery Channel). MCM therefore demanded equal treatment. CasTel explained that Eurosport and the Discovery Channel were exceptions. Firstly, financial terms with these two channels had been agreed a long time ago. Moreover, neither channel had specific reason to broadcast in that particular region, although they were highly valued by consumers and added to the variety of channels available. It was therefore unwise to remove them. OPTA did not agree with CasTel's line of argument. It said that CasTel could not justify paying a fee to some broadcasters but not to others. Therefore, its refusal to grant MCM access to the network simply because it was demanding a fee, was unjustified. OPTA thus ordered CasTel to treat the Muzzik channel under the same conditions, particularly financial, as Eurosport and the Discovery Channel. However, the claim to equal treatment should only be upheld if the regional programming authorities found that Muzzik added to the plurality of channels available in the region and should therefore be included in the so-called "standard package". Dutch broadcasting law stipulates that the standard package (a basic range of channels, which should be offered by cable network operators at the normal subscription fee), should be compiled on the recommendation of special programming authorities, which may be deviated from only in exceptional circumstances. Cable network operators therefore do not have total control over which channels they carry. Instead, it is the programming authorities' task to recommend a suitably-balanced combination of channels, representing the different cultural, social and religious interests of the community. OPTA also instructed CasTel to prepare and

publish a set of transparent, non-discriminatory licensing and payment guidelines in order to make its policies clear for all to see.

In two further cases, OPTA decided that cable network operator UPC should not exclude Dutch channels The Box, NieuwsNet 9 and NieuwsTV from its package for Amsterdam and the surrounding area. Earlier in the year, UPC decided to stop carrying these channels after the programming authority recommended, at UPC's request, that they should no longer feature in the standard package. OPTA used this case as an opportunity to reiterate that Dutch cable network operators are not totally free to decide which channels to carry and which to refuse access to. A channel already part of the standard package cannot be removed without good cause, particularly if the appropriate programming authority has not issued a specific recommendation to that effect. In these cases, UPC was not entitled to ask the programming authority to make new recommendations. UPC, for its part, had agreed with the municipality of Amsterdam that the standard package should not be altered until the cable networks were fully digitalised and the appropriate decoders had been distributed to customers. Over and above that, UPC wrongly obtained the programming authority's opinion not in regard to its full range of 32 channels, as extended after consultation with the municipality of Amsterdam, but only of the 26 channels in the original standard package.

Besluit inzake geschil MCM-CasTel, OPTA/IBT/2000/203072, Besluit van het college can de Onafhankelijke Post en Telecommunicatie Autoriteit op grond van artikel 8.7 van de Telecommunicatiewet, 17.11.2000

http://www.opta.nl/

Decision of the Independent Post and Telecommunications Authority, case MCM-CasTel, OPTA/IBT/2000/203072, 17 November 2000

Besluit inzake geschil The Box - UPC, OPTA/IBT/2000/203142, Besluit van het college van de Onafhankelijke Post en Telecommunicatie Autoriteit op grond van artikel 8.7 van de Telecommunicatiewet, 17.11.2000

http://www.opta.nl/

Decision of the Independent Post and Telecommunications Authority, case The Box - UPC, OPTA/IBT/2000/203142, 17 November 2000

Besluit inzake geschil Holland Advertising Nieuwe Media BV en Media Groep West BV UPC, OPTA/IBT/2000/203144, Besluit van het college van de Onafhankelijke Post en Telecommunicatie Autoriteit op grond van artikel 8.7 van de Telecommunicatiewet, 17.11.2000.

http://www.opta.nl/

Decision of the Independent Post and Telecommunications Authority, case Holland Advertising Nieuwe Media BV en Media Groep West BV UPC, OPTA/IBT/2000/203144, 17 November 2000

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